

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of the Secretary and

Department of Children and Family Services Office of the Secretary

Community and Family Support System
Flexible Family Fund (LAC 48:I.Chapter 161)

The Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary amend §16103, §16105, §16107, §16109, §16111, §16113 and §16115 of Part I concerning the Community and Family Support System Flexible Family Fund as authorized by R.S. 28:821 and as directed by House Bill 1 of the 2012 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R. S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 378 of the 1989 Regular Session of the Louisiana Legislature and Act 1011 of the 1991 Regular Session of the Louisiana Legislature created and continued the Community and Family Support System (R.S. 28:821 et seq.). The original Rule was promulgated to implement the cash subsidy program to provide a cash stipend to families of eligible children with severe and profound disabilities to offset the cost of keeping their children at home. The Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary amended the provisions governing the Community and Family Support System Flexible Family Fund by introducing a universal screening protocol for all children with identified qualifying exceptionalities for severity of functional limitations and changed terminology for qualifying exceptionalities to reflect current usage. The Rule also changed the name of the program from cash subsidy to flexible family fund. (*Louisiana Register*, Volume 37, Number 9).

As a result of a budgetary shortfall in state fiscal year 2013, the Department of Health and Hospitals promulgated an Emergency Rule which amended the provisions governing the Flexible Family Fund to enact financial eligibility criteria for children receiving a home and community-based services waiver (*Louisiana Register*, Volume 38, Number 9). This Emergency Rule is being promulgated to continue the provisions of the October 1, 2012 Emergency Rule. This action is being taken to avoid a budget deficit.

Effective February 1, 2013, the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary amends the provisions governing the eligibility

determination for the flexible family fund to enact financial eligibility criteria for children receiving a home and community-based services waiver.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 11. Community and Family Support System

Chapter 161. Community and Family Support System - Flexible Family Fund

§16103. Definitions

* * *

Family—the basic family unit consists of one or more adults and children, if any, related by blood, marriage, adoption, and residence in the same household.

Family Income—money or its equivalent in exchange for labor or services, from the sale of goods or property, or as profit from financial investments, benefits, entitlement, and any income that is not from working or from whatever source of gross income, which means all income from whatever source derived including (but not be limited to) the following:

1. interest;
2. rents;
3. royalties;
4. dividends;
5. alimony and separate maintenance payments;
6. annuities;
7. income from life insurance and endowment contracts;
8. pensions; and
9. income from an interest in an estate or trust.

* * *

Proof of Family Income—documentation of income, which for the flexible family fund, is a copy of the most recent tax return and all schedule attachments for each family member.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 18:186 (February 1992), amended LR 23:862 (July 1997), LR 28:1019 (May 2002), LR 33:1135 (June 2007), LR 37:2584 (September 2011), amended by the Department of Children and Family Services, Office of the Secretary and Department of Children and Family Services Office of the Secretary, LR 39:

§16105. Application Process

A. - B. ...

C. For the application to be complete, the documentation listed in §16103 of this rule, which identifies a qualifying exceptionality and proof of family income for families whose children receive a home and community-based services waiver, must accompany the application for the flexible family fund, and the application must be signed by the responsible care giver and received by the appropriate agency through the mail.

D. Applications for the flexible family fund shall be screened at the point of initial application to determine whether the child has a qualifying exceptionality, to determine financial eligibility for families whose children receive waiver services, to determine that the child is appropriately served by the agency and to ensure that applications are routed to the appropriate agency. When family income exceeds 650 percent of the federal poverty

level and the child is a home and community-based services waiver recipient, the child will be ineligible for participation in the flexible family fund.

E. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 18:186 (February 1992), amended LR 23:862 (July 1997), LR 28:1019 (May 2002), LR 33:1135 (June 2007), LR 37:2584 (September 2011), amended by the Department of Children and Family Services, Office of the Secretary and Department of Children and Family Services Office of the Secretary, LR 39:

§16107. Determining Children Eligible for the Flexible Family Fund

A. - F. ...

G. Children who receive a home and community-based services waiver and whose family income is at or less than 650 percent of the federal poverty level are eligible to participate in the flexible family fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 18:186 (February 1992), amended LR 23:862 (July 1997), LR 28:1019 (May 2002), LR 33:1135 (June 2007), LR 37:2584 (September 2011), amended by the Department of Children and Family Services, Office of the Secretary and Department of Children and Family Services Office of the Secretary, LR 39:

§16109. Children Ineligible for the Flexible Family Fund

A. - A.2. ...

3. children in residence at the Louisiana School for the Deaf and the Louisiana School for the Visually Impaired; and

4. children receiving a home and community-based services waiver and whose family income exceeds 650 percent of the federal poverty level.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 18:186 (February 1992), amended LR 23:862 (July 1997), LR 28:1019 (May 2002), LR 33:1135 (June 2007), LR 37:2584 (September 2011), amended by the Department of Children and Family Services, Office of the Secretary and Department of Children and Family Services Office of the Secretary, LR 39:

§16111. Eligibility Determination

A. - D. ...

E. There shall be financial eligibility criteria for the flexible family fund for recipients of a home and community-based services waiver.

1. DHH will determine if recipients of a home and community-based services waiver meet the financial eligibility requirements for the flexible family fund.

2. Recipients of a home and community-based services waiver whose family income exceeds 650 percent of the federal poverty level will be excluded from the flexible family fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR

18:186 (February 1992), amended LR 23:862 (July 1997), LR 28:1019 (May 2002), LR 33:1135 (June 2007), LR 37:2584 (September 2011), amended by the Department of Children and Family Services, Office of the Secretary and Department of Children and Family Services Office of the Secretary, LR 39:

§16113. Payment Guidelines

A. - C. ...

D. The family of recipients of a home and community-based services waiver is required to report to OCDD accurate and current family income. If a flexible family fund recipient becomes certified for a home and community-based services waiver, the family is required to report this change in status to OCDD and submit proof of family income. Documentation must be received by OCDD within 30 days of the change in income or home and community-based services waiver recipient status.

E. If it is discovered that the family of the recipient of a home and community-based services waiver sent in inaccurate family income eligibility documentation or that the family did not update OCDD with changes in income, and the recipient no longer meets the financial eligibility requirements as defined in §16111 of this rule, OCDD may follow-up with recoupment of funds paid during the period of ineligibility. If it is discovered that the family of the flexible family fund recipient did not update OCDD of certification of home and community-based services and the recipient did not meet the family financial eligibility requirements §16111 of this rule, OCDD may follow-up with recoupment of funds paid during the period of ineligibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 18:186 (February 1992), amended LR 23:862 (July 1997), LR 28:1019 (May 2002), LR 33:1135 (June 2007), LR 37:2584 (September 2011), amended by the Department of Children and Family Services, Office of the Secretary and Department of Children and Family Services Office of the Secretary, LR 39:

§16115. Terminations

A. - A.6. ...

7. failure to comply with the provisions of the individual agreement or the flexible family fund, including the requirement to maintain quarterly contact with the agency administering the flexible family fund and the requirement to provide required documentation, including proof of income for families of children receiving a home and community-based services waiver;

8. child's exceptionality or degree of severity no longer meets eligibility criteria;

9. child attains age 18 years;

10. responsible care giver fails to maintain the child in an approved educational program; or

11. income for the family of the child receiving a home and community-based services waiver exceeds 650 percent of the federal poverty level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 18:186 (February 1992), amended LR 23:862 (July 1997), LR 28:1019 (May 2002), LR 33:1135 (June 2007), LR 37:2584 (September 2011), amended by the Department of Children and

Family Services, Office of the Secretary and Department of Children and Family Services Office of the Secretary, LR 39:

Interested persons may submit written comments to Laura Brackin, Office for Citizens with Developmental Disabilities, P.O. Box 3117, Baton Rouge, LA 70821-3117. She is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at OCDD state office and regional offices and Human Services Authorities and Districts.

Bruce D. Greenstein
Secretary

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